

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305, titled Medical Dispute Resolution-General, and 133.307, titled Medical Dispute Resolution of a Medical Fee Dispute, a review was conducted by the Medical Review Division regarding a medical fee dispute between the requestor and the respondent named above.

I. DISPUTE

1. a. Whether there should be additional reimbursement for date of service 07/17/01?
- b. The request was received on 01/31/02.

II. EXHIBITS

1. Requestor, Exhibit 1:
 - a. TWCC 60 and Letter Requesting Dispute Resolution dated 01/15/02
 - b. HCFA's/UB-92 1450
 - c. EOB
 - d. EOBs from other carriers
 - e. Medical Records
 - f. Any additional documentation submitted was considered, but has not been summarized because the documentation would not have affected the decision outcome.
3. Per Rule 133.307 (g) (3), the Division forwarded a copy of the requestor's 14 day response to the insurance carrier on 03/26/02. Per Rule 133.307 (g) (4), the carrier representative signed for the copy on 03/28/02. The response from the insurance carrier was received in the Division on 04/17/02. Based on 133.307 (i) the insurance carrier's response is untimely so the Commission shall issue a decision based on the request.
4. Notice of Medical Dispute is reflected as Exhibit #3 of the Commission's case file.

III. PARTIES' POSITIONS

1. Requestor:
 - a. "The Provider is not in receipt of complete payment for the bill for ambulatory surgery facility charges referenced above. The bill in dispute is for outpatient ambulatory surgery services rendered to the above-referenced patient on the above-referenced date. The carrier is obligated to pay for these services at a fair and reasonable rate of reimbursement in accordance with TWCC Rule § 13.1, as the TWCC has not established a maximum allowable reimbursement for ambulatory surgery services." The provider is seeking additional reimbursement in the amount of \$1,976.17 for the date of service 07/17/02.

IV. FINDINGS

1. Based on Commission Rule 133.307(d) (1) (2), the only date of service eligible for review is 07/17/01.
2. The Provider billed \$3,094.17 for the date of service 07/17/01.
3. The Carrier paid \$1,118.00 for the date of service 07/17/01.
4. The amount in dispute is \$1,976.17 for the date of service 07/17/01.
5. The denial code on the EOB submitted is M-“IN TEXAS, OUTPATIENT SERVICES ARE TO BE PAID AS FAIR AND REASONABLE.”

V. RATIONALE

Medical Review Division's rationale:

“413.011(d) Guidelines for medical services fees must be fair and reasonable and designed to ensure the quality of medical care and to achieve effective medical cost control. The guidelines may not provide for payment of a fee in excess of the fee charged for similar treatment of an injured individual of an equivalent standard of living and paid by that individual or by someone acting on that individual’s behalf. The commission shall consider the increased security of payment afforded by this subtitle in establishing the fee guidelines.”

The medical reports indicate that the services were performed on a worker with a diagnosis of (Plantar fasciitis), ICD-9 Code 719.47. The four EOBs from other insurance carriers that were submitted by the Requestor show ICD-9 Codes of 728.71 and 719.47. All of the EOBs submitted do show that the Requestor was paid at 91% of the billed charges.

However, the additional information provided by the Requestor should not be overlooked. The Requestor has provided a chart that indicates what all the other workers' compensation carriers in Texas pay on an average. In a comparison of the three charts titled "List of Percentage Payments by Texas WC Insurances" and separated by years (1998-1999, 1999, and 2000), it was noted that there has been a consistent payment policy of many of the carriers to pay approximately 85% of the billed charges. There are carriers who have paid less and some that have paid more. There has also been a decline in the number of carriers who pay at 100% or above from 1998 to 2000. In 1998-99, 28% of the carriers paid at or above 100% and in 2000 only 13% paid at this rate. Also, the rate of payment below 85% for these same years has ranged from 28% to 31%. The figure for the carriers who paid between 86% to 100% for 1998-99 is 16% and for 1999 and 2000, it is 13% each. As the provider has supplied this information in his packet to prove his fees are fair and reasonable, then it will be accepted as an accurate reflection of the payment policies of carriers in the Texas Workers' Compensation system for this particular clinic.

Due to the fact that there is no current fee guideline for ASCs, the Medical Review Division has to determine, based on the parties' submission of information, who has provided the more persuasive evidence. As the requestor, the health care provider has the burden to prove that the fees paid were not fair and reasonable. In this case, the provider has submitted EOBs from four workers' compensation carriers that indicates those carriers paid 91% of the billed charges. The Requestor has also provided additional information to indicate that the average of all workers' compensation insurance carriers in the state of Texas pay an average of 84% of the billed charges. This substantiates that the majority of the carriers agree that an average of 84% of the billed charges are a fair and reasonable reimbursement. The law or rules are not specific in the amount of evidence that has to be submitted for a determination of fair and reasonable. However, in this case, the provider has submitted enough information to support the argument that the fees charged should be paid at 84% of the billed cost. Therefore, additional reimbursement is recommended in the amount of \$1,481.10. **(\$3094.17 x 84% = \$2,599.10 - \$1,118.00 already paid = \$1,481.10)**

VI. ORDER

Pursuant to Sections 402.042, 413.016, 413.031, and 413.019 the Medical Review Division hereby ORDERS the Respondent to remit \$1,481.10 plus all accrued interest due at the time of payment to the Requestor within 20 days receipt of this order.

This Order is hereby issued this 21st day of May 2002.

Michael Bucklin, LVN
Medical Dispute Resolution Officer
Medical Review Division

MB/mb